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VIA ELECTRONIC MAIL ONLY AND FASCIMILE

Ms. Diona G. Mullins, Policy Advisor
Cabinet for Health and Family Services
Office of Health Policy
275 East Main Street, 4W-E
Frankfort, Kentucky 40621
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RE: Certificate of Need Modernization

Dear Ms. Mullins:

Please accept these comments on behalf of the Kentucky Home Care Association ("KHCA"). The KHCA is a trade association founded in 1974 that represents and serves Kentucky's home health and home care industry. KHCA represents nearly 70 home health agencies including non-profit, for-profit, health department based, multi-state and independent agencies. KHCA also represents hospices, personal services agencies and companies that deliver durable medical equipment and supplies. KHCA is active on the national level with the National Association for Home Care and Hospice and the National Hospice and Palliative Care Organization.

We at KHCA are familiar with the "Commonwealth of Kentucky Health Care Facility Capacity Report" ("The Deloitte Study"). We agree with much of The Deloitte Report. Home health, in all of its forms, is, and will continue to be, a linchpin in the evolution of the health care delivery system. Therefore, the home health industry must maintain its economic viability and stability. We strongly support the certificate of need ("CON") program and disagree that it should be suspended or discontinued for home health. There exists sufficient capacity within the Commonwealth to provide quality home care services through existing agencies. The methodology for home health, however, should be reviewed as it does not adequately identify need for additional agencies or distinguish among services. If certificate of need were suspended or discontinued, the continued economic viability of existing agencies would be compromised as the patient base could be eroded by the influx of additional providers. Kentucky has been able to maintain a stable and economically viable home health industry that delivers quality care to an increasing patient base. Unlike other states where there has been a proliferation of home health agencies, Kentucky has not experienced the same level of CMS and OIG investigations of fraud and abuse issues.

KHCA agrees with the Deloitte Study that the implementation of economic incentives would enable home health agencies to provide care to patients with higher acuity levels as well as maintain a stable work force. Home health agencies' ability to use telehealth or other technology, and receive reimbursement therefore, would also enable increased access without the necessity of expensive and sometimes dangerous travel in the more rural parts of the state. Home health agencies have not seen

an increase in their reimbursement rates in over 20 years. Therefore, there has been a decline in the number of agencies that accept Medicaid patients. This, as well as proposed reductions in Medicare reimbursement for home health services, further threatens economic viability. Another potentially adverse financial impact that must be considered is the requirement of conflict free case management for waiver recipients.

The Deloitte Study's suggestion that CON be suspended or discontinued for home health care exhibits a misunderstanding of Kentucky's current certificate of need law as it applies to home health. Once established, a home health agency can add nurses and services in its approved service area as the need for services grows. Additional agencies aren't necessarily the answer, rather a modernized reimbursement system that ensures economic viability and work force sustainability could address many issues.

The State Health Plan methodology for home health should be amended, as suggested by the Deloitte Study. The current methodology only considers data that are limited to age, population, and average statewide utilization rates. While instructive for certain purposes, application of a statewide utilization rate to a county is not indicative of "need." Various other factors including, but not limited to, health status, poverty rates, access to other levels of health care, and individual physician practice patterns significantly impact the potential need for additional health care services in a particular area. Need varies significantly across the Commonwealth as do the demographics directly linked to health status and home health utilization. Further, the data clearly show that there is no correlation between the number of licensed home health agencies in a county and that county's utilization rate. Therefore, increasing the number of licensed agencies in any particular county would not necessarily increase overall utilization - there is no relationship between low utilization and a small number of licensed agencies or multiple agencies and a higher overall use rate for home health.

In other states where Certificate of Need laws have been repealed or relaxed, the number of home health agencies has dramatically increased. Prime examples are Texas and Florida. Several years ago Texas eliminated its CON requirements for home health and today there are over 2,500 Medicare/Medicaid certified home health agencies and that number continues to grow. In Harris County, Texas around Houston, an area under intense CMS and OIG scrutiny, there are over 900 home health agencies alone – more than the total number of home health agencies in Kentucky, West Virginia, Virginia, North Carolina, South Carolina and Georgia combined. Tennessee ultimately reinstated its CON program due to rampant growth after its repeal. In states like Texas, Florida and California where home health CON has been repealed or relaxed, agencies grew dramatically as did the higher cost per Medicare beneficiary which led to increased federal scrutiny. Historically, when CON is relaxed or lifted, states quickly experience dramatic growth in the number of agencies; such growth inevitably leads to multiple issues including, but not limited to, CMS and OIG inquiries into fraud and abuse. These would be undesirable results for the Commonwealth and its residents.

Thank you for your consideration of these comments. As always, please feel free to call the KHCA for additional information.

Sincerely,

Sharon A Branham

Sharon A Branham
Interim Executive Director